IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 9 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

RAJNIBEN CHINUBHAI

Appearance:
MR AKIL QURESHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the revenue, the Income-tax Appellate Tribunal, Ahmedabad Bench "B" has referred the

following question of law for opinion of this Court in respect of Assessment Year 1983-84 :-

"Whether the Tribunal is right in law in holding that the capital gains is to be taxed in the hands of the trust and not in the hands of the assessee, a sole beneficiary ?"

2. The ITO included in the total income of the assessee, the capital gains of Rs.21,300/- earned by the Trust of which the assessee is the beneficiary. Following the decisions of the CIT(A) as well as ITAT, Ahmedabad Bench "B" on this issue, the CIT(A) held that the capital gains earned by the trust cannot be assessed in the appellant's hands. The Tribunal has confirmed the view taken by the CIT(A).

3. Though served, none appears on behalf of the respondent. We have heard the learned counsel for the revenue. The learned counsel for the revenue states at the Bar that the controversy raised in the present reference is answered by the Division Bench of this Court in CIT vs. Rajniben Chinubhai (Indl.) (this very assessee) in ITR No. 175/85, decided by the Hon'ble the Chief Justice and Mr Justice A.R. Dave on October 19, 2000. The Division Bench in the aforesaid case has held that the amount of capital gains should be taxed in the hands of the Trust and not in the hands of the beneficiary.

4. In view of the decision referred to above, the reference is answered in favour of the assessee and against the revenue. The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-